

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER BRANDON DAVIS,  
  
Plaintiff,  
  
v.  
  
M. PORTILLO, et al.,  
  
Defendants.

Case No.: 1:22-cv-00457 ADA-CDB (PC)

**FINDINGS AND RECOMMENDATIONS TO  
DISMISS CERTAIN CLAIMS**

14-DAY OBJECTION PERIOD

Plaintiff Christopher Brandon Davis is proceeding *pro se* and *in forma pauperis* in this civil rights action brought pursuant to 42 U.S.C. § 1983.

**I. RELEVANT PROCEDURAL BACKGROUND**

On April 10, 2023, this Court issued its First Screening Order. (Doc. 19.) The Court found Plaintiff's first amended complaint (Doc. 12) stated the following cognizable claims: (1) First Amendment retaliation claims against Defendant Portillo (claims one & four) and Defendant Brown (claim three); (2) an Eighth Amendment excessive force claim against Defendant Portillo (claim two); (3) an Eighth Amendment failure to protect claim against Defendant Molina (claim one); and (4) a due process clause violation against Defendant Brown (claim three). (Doc. 19 at 4-20.) However, the Court found Plaintiff's first amended complaint failed to state any other cognizable claim against any other defendant. (*Id.* at 20.) Plaintiff was given 21 days to elect one of the following options: (1) to file a second amended complaint curing the deficiencies identified

1 in the order; (2) to notify the Court of his willingness to proceed *only* on the claims found  
2 cognizable by the Court; or (3) to file a notice of voluntary dismissal. (*Id.* at 21.)

3 On April 24, 2023, Plaintiff filed a document titled “Response to First Screening Order.”  
4 (*See* Doc. 21.) Plaintiff advises he does not wish to file a second amended complaint and is  
5 willing to proceed on the claims found cognizable by the Court in its First Screening Order. (*Id.*).

6 **II. FINDINGS AND RECOMMENDATIONS**

7 Accordingly, and for the reasons set forth in the Court’s First Screening Order (Doc. 19),  
8 the Court **RECOMMENDS** that:

- 9 1. This action PROCEED on the following: (a) First Amendment retaliation claims  
10 against Defendant Portillo (claims one & four) and Defendant Brown (claim three);  
11 (b) an Eighth Amendment excessive force claim against Defendant Portillo (claim  
12 two); (c) an Eighth Amendment failure to protect claim against Defendant Molina  
13 (claim one); and (d) a due process clause violation against Defendant Brown (claim  
14 three), in their individual capacities, pursuant to 42 U.S.C. § 1983; and  
15 2. The remaining claims in Plaintiff’s first amended complaint be DISMISSED.

16 These Findings and Recommendations will be submitted to the United States District  
17 Judge assigned to this case, pursuant to 28 U.S.C. § 636(b)(1). Within 14 days of the date of  
18 service of these Findings and Recommendations, a party may file written objections with the  
19 Court. The document should be captioned, “Objections to Magistrate Judge’s Findings and  
20 Recommendations.” Failure to file objections within the specified time may result in waiver of  
21 rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014) (citing *Baxter v.*  
22 *Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991).

23 IT IS SO ORDERED.

24 Dated: April 25, 2023

25   
UNITED STATES MAGISTRATE JUDGE